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EX PARTE OR LATE FILED

December 10, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: *Ex Parte* Presentation
CC Docket No. 98-147

Dear Ms. Salas:

In conformity with the Commission's rules, enclosed please find two copies of a written *ex parte* presentation for inclusion in the above-referenced docket.

Should you have any questions concerning this matter, please contact the undersigned directly.

Sincerely,

Mark J. O'Connor
Counsel for the Commercial Internet
eXchange Association

/mjo
Enclosures

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December 10, 1998

EX PARTE OR LATE FILED

EX PARTE

VIA HAND DELIVERY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

Re: **CC Docket No. 98-147**

Dear Mr. Kennard:

This ex parte letter is submitted by the undersigned competitive telecommunications and information service companies and associations in response to the joint filing submitted in the above-referenced proceeding on December 7, 1998 by the largest incumbent local exchange carriers (four of the five Regional Bell Operating Companies ("RBOCs") and GTE), and certain computer companies. We urge the Commission to reject this proposal as the latest attempt to undermine the statutory mandates and pro-competitive promise of The Telecommunications Act of 1996 ("1996 Act"), and extend the RBOCs and GTE's local bottleneck to Internet services.

In essence, the proponents' ex parte letter argues that the largest ILECs require a wholesale waiver of key elements of the 1996 Act in order to have the necessary economic incentives to deploy high-speed broadband Internet access technologies such as Digital Subscriber Line ("DSL"). The largest ILECs offer four "concessions," each subject to various technical, economic, and timing limitations: (1) CLECs can utilize collocation for advanced services (common cage, virtual, physical, or cageless, of the ILEC's choosing); (2) CLECs can utilize DSL-capable loops as unbundled network element ("UNEs"); (3) the ILECs' integrated provision of DSL services are subject to existing nonstructural safeguards; and (4) the ILECs' advanced services offerings will not discriminate against unaffiliated ISPs.

In exchange for these "concessions," the RBOCs and GTE would receive significant relief from applicable legal requirements, including: (1) no provision of DSL electronics as UNEs; (2) no resale of DSL services at any discount; (3) unlimited transfer of ILEC assets, employees, and services accounts to separate affiliates for up to 12 months; (4) no significant separation requirements; (5) deregulation and detariffing of advanced services rates once half of residential lines have access to DSL services; and (6) granting the RBOCs liberal waivers of interLATA boundaries for data services.

On its face, this proposal is a sham. On legal grounds, this proposal blatantly violates the Act. By "promising" to abide by existing nonstructural safeguards and Computer III nondiscrimination requirements, and to grant competitors access to unbundled loops and collocation rights already required by the 1996 Act, the RBOCs and GTE give up nothing. Instead, however, the largest ILECs gain a "get out of jail free" card from the most critical pro-competitive mandates of the Act. This hardly seems like a fair bargain, especially for consumers, who will be denied choice, innovation, reasonable prices, and the other tangible benefits of competition.

Furthermore, the large ILECs' "lack of incentives" argument is baseless. The Commission itself has assembled an ample public record proving the futility of these claims. First, the supposed difficulties of providing advanced services such as DSL do not involve building brand-new data networks; instead, existing copper loops and telephone plant are being utilized along with DSLAMs and end user modems. This new equipment is relatively inexpensive and certainly can be deployed by the RBOCs and GTE on a timely basis to most ILEC central offices under existing rules. The competitive deployment of DSL service is not hindered by equipment costs or network upgrades, but rather the fundamental inability of CLECs to obtain reasonable cost-based access to the ILECs' equipment and facilities. The large ILECs also ignore the fact that CLECs must fully compensate the ILECs for the right to utilize DSL-equipped loops, DSL electronics, collocation space, and interoffice facilities. Moreover, contrary to their rhetoric, the RBOCs and GTE already are deploying DSL in response to the perceived competitive threat from cable modems.

More importantly, the proposal clearly violates the 1996 Act. As the FCC has already correctly concluded this past August:

> Section 251(c)(3) requires these ILECs to provide CLECs with unbundled network elements, including DSL-capable loops and accompanying operational support systems ("OSS"), as well as all facilities and equipment used to provide advanced services (such as DSLAMs);
>
> Section 251(c)(4) requires these ILECs to offer advanced services such as DSL for resale at wholesale rates;
>
> Section 251(c)(6) requires these ILECs to provide competitors with just, reasonable, and nondiscriminatory access to collocation space in order to provide advanced services.
>
> Section 271 prohibits the RBOCs from providing telecommunications or information services across LATA boundaries without meeting the requirements of Sections 271 and 272 of the Act.

Private parties cannot overturn these provisions of the law.

It is the free market, and not government, that creates incentives for companies to invest in and deploy new technologies and services. It is the market, and not government, that rewards risk. But where there is not a free market, and instead only a monopoly market like the large ILECs have today, government must do what it can to curb that monopoly and maximize the conditions for competition.

In many respects, this proposal is the complete opposite of what the Internet itself represents: openness, innovation, competition, and freedom of choice. Perhaps this explains why, even though these RBOCs and GTE and their allies claim to speak on behalf of Internet providers and Internet users, neither of these constituencies is present at the signature line. It is disappointing that these computer companies have joined the RBOCs and GTE in their proposal. How ironic it is that their proposal to "solve" this "problem" does not even include those it purports to serve – there are no consumer groups, no user groups, no competitive local exchange carriers, and no Internet service providers.

In the view of the undersigned, the key problem facing American consumers is not, as these companies claim, the pro-competitive mandates of the 1996 Act, but rather their continuing refusal to abide by those mandates. The only problem here is the large ILECs' local loop bottleneck, and no amount of deal-making, no matter how big the players, can change that reality. The only way to rid American consumers of that bottleneck and offer all the benefits and services backed up and waiting behind that last mile, is, plain and simple, to enforce the 1996 Act.

In accordance with the Commission's ex parte rules, two copies of this letter will be submitted today to the Commission's Secretary's office.

Sincerely,

UNITED STATES INTERNET SERVICE PROVIDERS ALLIANCE

Barbara A. Dooley
President
Commercial Internet eXchange Association

David Jemmett
Chairman
Arizona Internet Access Association

Michael Eggley
President
Internet Providers Association of Iowa Association

Joseph Marion
Executive Director
Florida Internet Service Providers

Chad Kissinger
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cc: Commissioner Susan P. Ness
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Katherine Brown, Chief of Staff, Chairman Kennard
Larry Strickling, Chief, Common Carrier Bureau
Dr. Robert Pepper, Chief, Office of Plans and Policy